



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
Phoenix District Office
21605 North 7th Avenue
Phoenix, Arizona 85027
www.az.blm.gov

In Reply Refer To:
4160 (230)

November 23, 2005

CERTIFIED MAIL – RETURN RECEIPT REQUESTED NO. 5091 6409

Mr. Jeff Burgess
P.O. Box 20862
Phoenix, AZ 85036

NOTICE OF FINAL DECISION

Dear Mr. and Mrs. Kelton:

On July 31, 2005, after considering comments from various interested publics, an interdisciplinary team completed an evaluation of your grazing allotment.

A Proposed Decision to re-authorize the lease for the **Box Bar Allotment** was sent to you as the affected lessee and all interested publics on August 29, 2005, which contained the proposed terms and conditions for continued livestock grazing.

This office received two written protests from Mr. Jeff Burgess and the Center for Biological Diversity. These comments were accepted as a protest of the new terms and conditions contained in the proposed decision. These comments were within the 15 day protest period allowed.

The following points were raised by Mr. Burgess; in summary:

1. The proposed decision violates 43 CFR 4180.2(c), appropriate actions will not be taken prior to March 1, 2006, cattle will be allowed to remain in the riparian pastures for a period up to two weeks which could practically destroy a riparian area, no reduction in allowable AUMs, a problem with the maximum utilization rate.

Response – The decision does not violate 43 CFR 4180.2 (c), appropriate actions will be taken prior to March 1, 2006 with the issuance of new terms and conditions for the new grazing lease. Range improvements needed to implement the livestock management changes are scheduled and are anticipated to be completed prior to March 1, 2006. Cattle are not allowed to remain in the riparian pastures for two weeks, the statement has been misconstrued. When cattle are moved between pastures they cross the riparian pastures to access new pastures. This flexibility allows

for such occurrences as: weather changes, movement of cows with small calves. The non-grazing period for the riparian pastures will provide adequate vegetative recovery and achieve proper functioning condition. Within the rangeland health evaluation for the Box Bar allotment actual use records and livestock utilization were considered. The determination was a reduction in permitted numbers was not appropriate at this time. Additional inventory and monitoring data are needed in anticipation of a change in pasture use to determine a proper stocking for the Box Bar allotment. The BLM will monitor utilization levels to insure authorized use levels will allow progress towards meeting land health standards. Monitoring procedures are identified in agency manuals and handbooks and are followed in the normal course of business. The scenario referenced in the protest has been misconstrued, and is outside of agency procedure.

2. The proposed decision violates 43 CFR 4120.2 (c), an opportunity for public participation in the planning and environmental analysis was not provided, and the Phoenix RRT was not provided an opportunity for a field trip.

Response – The decision does not violate 43 CFR 4120.2 (c), the grazing regulations contain many provisions for public participation in the Bureau of Land Managements' decision making process. Consultation, cooperation and coordination (CCC) with the interested public is the core of the public participation process, and provides the BLM the opportunity to consider the most complete information before making decisions.

Implementation of the Arizona Standards for Rangeland Health and Guidelines for Grazing Administration was sent out to interested publics to allow for full implementation of Arizona Standards and Guidelines. On April 28, 1997 Arizona Standards for Rangeland Health and Guidelines for Grazing Administration (S&Gs) approved by Secretary of the Interior and adopted into all Land Use Plans (LUP) in Arizona as indicated by the Decision of Record for the Statewide Amendment.

Prior to the start of the grazing year (March 1) a letter is sent out to potential interested publics and members of the Phoenix Rangeland Resource Team to solicit interest in the decision-making process for the grazing term permit renewals and standards and guidelines evaluations. The letter informs them of the need to submit a written request to be involved in the decision making process on specific grazing allotment regarding the management of livestock grazing. Additionally, the letter solicits interested publics and stake holders to provide allotment-specific resource data that would assist us in identifying areas of concern and analyzing resource conditions. Those interested publics that expressed an interest or provided comments were all notified through correspondence and public meetings that documents pertaining to the evaluation were available upon request and the draft rangeland health allotment evaluation would be sent out for a 30 day comment period.

Mr. Burgess did provide a letter on December 28, 2004 requesting to be an interested public on the Box Bar allotment. He stated that individuals were planning a field trip to the Agua Fria River. Mr. Burgess was contacted on January 11, 2005 and advised of the status of the S&G evaluation and NEPA document. He was invited for a field day to the allotment on January 19, 2005, he declined. He was advised he could request a visit to the allotment with BLM staff as he was available. He was also advised that Phoenix District personnel would participate in the field trip if notice was given of time and date. Phoenix District was not provided the date and time of

the field visit, or a request for a future field visit. Prior to the protest letter the Phoenix District had not received any further correspondence from him requesting the evaluation or any NEPA documents. On September 15, 2005 Mr. Burgess was contacted in response to a telephone message he left and the points of his protest were discussed, and administrative procedures related to the protest letter. He was extended an invitation to visit the allotment with staff from the BLM. The Phoenix District had not received any written or verbal comments or request for a field visit from any other member of the Phoenix RRT concerning the Box Bar allotment.

In accordance with National Environmental Policy Act Handbook, BLM does not produce a draft, final or supplemental or revised environmental assessment (EA), just an EA. The BLM is directed to integrate NEPA requirements with other environmental review and consultation requirements to reduce paperwork and delays. In accordance with 43 C.F.R. 4130-3, to the extent practical, the authorized officer shall provide to affected permittees or lessees, States having lands or responsibility for managing resources within the affected area, and the interested public an opportunity to review, comment and give input during the preparation of reports (rangeland health allotment evaluation) that evaluate monitoring and other data that are used as a basis for making decisions to increase or decrease grazing use, or to change the terms and conditions of a permit or lease.

The finding of no Significant Impact (FONSI) and EA was prepared and sent out upon request from interested publics and stakeholders in accordance with 40 C.F.R. 1501.4 (e)(1) and 1506.6 via certified letters.

The Phoenix District provided copies of the draft rangeland health allotment evaluation in response to the specific request for that document from Arizona Game and Fish Department and the grazing lessee, Mr. Kelton. Their input was considered in preparation for the final rangeland health allotment evaluation.

The following points were raised by the Center for Biological Diversity; in summary:

1. The proposed decision fails to preserve the objects designated for protection in the Presidential Proclamation of January 11, 2000. Grazing does known damage to monument resources and the decision fails to protect them.

Response – The decision is in compliance with the monument proclamation: specifically, “laws regulations and policies followed by the Bureau of Land Management in issuing and administering grazing leases on all lands under its jurisdictions shall continue to apply with regards to the lands in the monument.” Management practices are in accordance with the Phoenix Resource Management Plan: “... to restore and improve rangeland condition ... to maintain and improve habitat and viable wildlife populations.

2. The proposed decision allows grazing to continue and reductions were not included in the preferred alternative.

Response – See response No. 1 to Mr. Burgess.

3. The agency failed to provide the interested publics with copies of the draft EA before the decision was issued.

Response – See response No. 2 to Mr. Burgess.

4. The agency failed to consult and coordinate with the interested public and relevant agencies. We protest that the USFWS was not re-consulted prior to issuance of the decision.

Response – The Phoenix District requested formal conference with the U.S. Fish and Wildlife Service (FWS) on August 19, 2003 and the opinion was provided in accordance with section 7 of the Endangered Species Act of 1973 as amended (16 U.S.C. 1531 et seq.) and under conferencing procedures provided in 50 CFR 402.10. The conference opinion was incorporated within the terms and conditions listed in the proposed decision.

5. Livestock are allowed to linger for up to two weeks in riparian pastures, risking further damage to these degraded areas.

Response – See response No. 1 to Mr. Burgess.

6. Utilization limits on these are an average of 40 percent utilization of key forage species over multiple years.

Response – See response No. 1 to Mr. Burgess.

DECISION

Based upon the rangeland health allotment assessment and evaluation, consultation with affected permittee, interested publics, and consideration of protest points; and recommendations from the interdisciplinary assessment team, my final decision is as follows:

Permitted Livestock Use:

<u>No.</u>	<u>Period of Use</u>	<u>% Public Land</u>	<u>Animal Unit Months (AUMs)</u>
206	3/1-2/28	99	2447

Terms and conditions

1. For the Agua Fria River pastures (River and Big Bug), modify the season of use to winter use grazing (November 1 to February 28). Livestock movement across these pastures will be permitted in times outside of the season of use. Cattle must be moved across these pastures within a two-week time period, unless weather conditions or situations beyond the control of the lessee do not allow. Concurrence from Phoenix Field Office personnel must be requested in advance. The Big Bug pasture restriction will be implemented following the construction of a boundary fence between the public lands and Arizona State Lands anticipated occurring in late 2005 or early 2006.
2. For the Indian Creek drainage (Bald Hill and Cross S), modify the season of use to winter use grazing (November 1 to February 28). Livestock movement across these pastures

will be permitted in times outside of the season of use. Cattle must be moved across these pastures within a two-week time period, unless weather conditions or situations beyond the control of the lessee do not allow. Concurrence from Phoenix Field Office personnel must be requested in advance.

3. For all riparian pastures authorize a 25 percent bank alteration and 30 percent apical bud utilization limit on riparian tree species to allow for the rest of vegetation and to achieve proper functioning conditions.
4. In order to improve livestock distribution on public lands, salt blocks and/or mineral supplements will not be placed within a 1/4 mile of any riparian area, wet meadow, or watering facility (either permanent or temporary) unless stipulated through a written agreement or decision in accordance with 43 CFR 4130.3-2 (c)

RATIONALE

I have determined that the permitted use as indicated by the proposed decisions dated August 17, 2005, for the Box Bar allotment is in accordance with the regulations found in Title 43 Code of Federal Regulations subpart 4100. In accordance with Bureau policy and regulations, this data has been examined and evaluated in order to determine progress towards meeting Arizona's Standards for Rangeland health and other land use plan objectives. The analysis of data through the standard assessment and allotment evaluation indicated that Standard 1 (Upland Sites) did not meet the standard but is making significant progress towards meeting the standard. Standard 2 (Riparian – Wetland Sites) for the Agua Fria river is not meeting the standard, Indian Creek is making significant progress towards attainment. Standard 3 (Desired Resource Conditions) was not fully met but is making significant progress towards attainment. The grazing management practices are in accordance with Arizona Guidelines for Grazing Administration. Therefore, in accordance with 43 C.F.R. 4130.3 it is my final decision to offer a new permit with the terms and conditions as stated above for livestock grazing in the Box Bar allotment No. 06063.

AUTHORITY

The authority for this decision is also contained in Title 43 of the Code of Federal Regulations including, but not limited to the following sections:

§4110.3 “The authorized officer shall periodically review the permitted use specified in a grazing permit or lease and shall make changes in the permitted use as needed to manage, maintain or improve rangeland productivity, to assist in restoring ecosystems to properly functioning condition, to conform with land use plans or activity plans, or to comply with the provisions of subpart 4180 of this part. These changes must be supported by monitoring, field observations, ecological site inventory or other data acceptable to the authorized officer.”

§4110.3-2(b) “When monitoring or field observations show grazing use or patterns of use are not consistent with the provisions of subpart 4180, or grazing use is otherwise causing an unacceptable level or pattern of utilization, or when use exceeds the livestock carrying capacity as determined through monitoring, ecological site inventory or other acceptable methods, the

authorized officer shall reduce permitted grazing use or otherwise modify management practices.”

§4110.3-3(a) “After consultation, cooperation, and coordination with the affected permittee or lessee, the State having lands or managing resources within the area, and the interested public, reductions of permitted use shall be implemented through a documented agreement or decision of the authorized officer. Decision implementing 4110.3-2 shall be issued as proposed decisions pursuant to 4160.1 except as provided in paragraph (b) of this section.”

§4130.3 “Livestock grazing permits and leases shall contain terms and conditions determined by the authorized officer to be appropriate to achieve management and resource condition objectives for the public lands and other lands administered by the Bureau of Land Management, and to ensure conformance with the provisions of subpart 4180 of this part.”

§4130.3-1(a) “The authorized officer shall specify the kind and number of livestock, the period(s) of use, the allotment(s) to be used, and the amount of use in animal unit months, for every grazing permit or lease. The authorized livestock grazing use shall not exceed the livestock carrying capacity of the allotment.”

§4130.3-1(c) “Permits and leases shall incorporate terms and conditions that ensure conformance with subpart 4180 of this part.”

§4130.3-2 “The authorized officer may specify in grazing permits or leases other terms and conditions which will assist in achieving management objectives, provide for proper range management or assist in the orderly administration of the public rangelands. These may include but are not limited to: ... (d) A requirement that permittees or lessees operating under a grazing permit or lease submit within 15 days after completing their annual grazing use, or as otherwise specified in the permit or lease, the actual use made; ... (f) Provisions for livestock grazing temporarily to be delayed, discontinued or modified to allow for the reproduction, establishment, or restoration of vigor of plants ... of for the protection of other rangeland resources and values consistent with objectives of applicable land use plans,”

§4130.3-3 “Following consultation, cooperation, and coordination with the affected lessees or permittees, the State having lands or responsible for managing resources within the area, and the interested public, the authorized officer may modify terms and conditions of the permit or lease when the active use or related management practices are not meeting the land use plan, allotment management plan or other activity plan, or management objectives, or is not in conformance with the provisions of subpart 4180 or this part. To the extent practical, the authorized officer shall provide to affected permittees or lessees, States having lands or responsibility for managing resources within the affected area, and the interested public an opportunity to review, comment and give input during the preparation of reports that evaluate monitoring and other data that are used as a basis for making decisions to increase or decrease grazing use, or to change the terms and conditions of a permit or lease.”

§4160.2 “Any applicant, permittee, lessee or other interested public may protest the proposed decision under 4160.1 of this title in person or in writing to the authorized officer within 15 days after receipt of such decision.”

§4180.1 “The authorized officer shall take appropriate action under subparts 4110, 4120, 4130, and 4160 of this part as soon as practicable but not later than the start of the next grazing year upon determining that existing grazing management needs to be modified to ensure that the following conditions exist.

- (a) Watersheds are in, or are making significant progress toward, properly functioning physical condition, including their upland, riparian-wetland, and aquatic components; soil and plant conditions support infiltration, soil moisture storage, and the release of water that are in balance with climate and landform and maintain or improve water quality, water quantity, and timing and duration of flow.
- (b) Ecological processes, including the hydrologic cycle, nutrient cycle, and energy flow, are maintained, or there is significant progress toward their attainment, in order to support healthy biotic populations and communities.
- (c) Water quality complies with State water quality standards and achieves, or is making significant progress toward achieving, established BLM management objectives such as meeting wildlife needs.
- (d) Habitats are, or making significant progress toward being, restored or maintained for Federal threatened and endangered species, Federal Proposed, Category 1 and 2 Federal candidate and other special status species.”

ADDITIONAL AUTHORITY:

The authority for this decision includes Section 7 of the Endangered Species Act (ESA) and Title 50 of the Code of Federal Regulations (CFR) Part 402, which identifies the procedures for ESA compliance.

More specifically, 50 CFR 402.14 requires “formal consultation...on all actions that may affect a listed species, its habitat, or any designated critical habitat” and 50 CFR 402.15(a) states that “Following the issuance of a biological opinion, the Federal agency shall determine whether and if in what manner to proceed with the action in light of its section 7 obligations and the Services biological opinion.”

RIGHT OF APPEAL

Any applicant, permittee, lessee or other person whose interest is adversely affected by the final decision may file an appeal in accordance with 43 CFR 4160.4, and 43 CFR 4.470. The appeal may be accompanied by a petition for stay of the decision in accordance with 43 CFR 4.21, pending final determination on appeal. The appeal and petition for stay must be filed in the office of the authorized officer, at the below listed address within 30 days following receipt of the final decision, or within 30 days after the date the proposed decision becomes final.

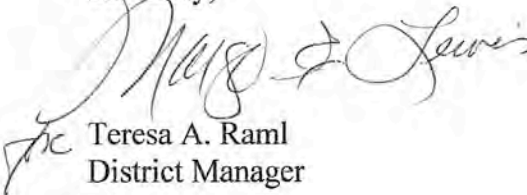
Bureau of Land Management
Phoenix District Office
ATTN: District Manager
21605 North 7th Avenue
Phoenix, Arizona 85027

The appeal shall state the reasons, clearly and concisely, why the appellant thinks the final decision is in error.

Should you wish to file a motion for a stay, the appellant must show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied.
2. The likelihood of the appellant's success on the merits.
3. The likelihood of immediate and irreparable harm if the stay is not granted, and
4. Whether the public interest favors the stay.

Sincerely,



Teresa A. Raml
District Manager